

# **Exhibit A**

March 15, 2021

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UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

ELLIOT MCGUCKEN,

Plaintiff,

vs.

Case No.

1:19-cv-09617 (KPF)

NEWSWEEK, LLC,

Defendant.

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CONFIDENTIAL DEPOSITION OF ELLIOT MCGUCKEN, Ph.D.

APPEARING REMOTELY FROM

VENICE, CALIFORNIA

March 15, 2021

9:35 a.m.

REPORTED BY:

Sheree L. Spencer

CSR No. 11073

APPEARING REMOTELY FROM LOS ANGELES COUNTY, CALIFORNIA

March 15, 2021

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1 REMOTE APPEARANCES:

2  
3 For Plaintiff:

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14

15 For Newsweek Digital, LLC:

16 COWAN, DeBAETS, ABRAHAMS & SHEPPARD LLP  
17 By: NANCY E. WOLFF  
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1 was the only one to get those lake shots, so and there's  
2 like, a lot of prestige in that throughout community and  
3 things like that. So that's what you're all aiming for  
4 and building that up over time.

5 Q. So is there -- do you ever work with a company  
6 or a publication regularly?

7 A. No, I don't.

8 Q. So would you say that photography is your  
9 full-time job?

10 A. Yes.

11 Q. Do you list photographer as your profession on  
12 a tax return?

13 A. Yes. "Fine art photographer."

14 Q. And regarding enforcement of your copyright,  
15 how much time do you spend doing that?

16 A. Not a whole lot. I mean, in the past month,  
17 I've probably done it not at all. I've been out in  
18 Utah, Yosemite, and Yellowstone. A week ago today I was  
19 photographing wolves at Yellowstone. So, yeah, I  
20 devoted myself to being on the road just pushing limits  
21 and getting -- getting really great shots.

22 Q. So from enforcement, do you receive any profit  
23 or incomes from -- from that?

24 MS. ZAHARIA: I'm going to object to the extent  
25 this calls for attorney-client communications.

1 BY MS. GATES:

2 Q. You can answer to the extent it doesn't get  
3 into any privileged communication.

4 THE WITNESS: Yes. In various forms, yes.

5 BY MS. GATES:

6 Q. When you refer to "various forms," what do you  
7 mean?

8 A. Well, relying on the expertise of attorneys,  
9 sometimes it's license, sometimes it's taken down,  
10 sometimes it's used, sometimes they pay. So basically  
11 I'm an expert in photography, but I'm not an expert in  
12 copyright infringement, so I leave that up to my  
13 attorneys pretty much a hundred percent.

14 Q. So you rely on your attorneys to enforce your  
15 copyright; is that correct?

16 A. Yes.

17 Q. And would you say that you generate any income  
18 from your attorneys' enforcement efforts?

19 A. Yes.

20 Q. And about how much income a month do you  
21 generate from enforcement?

22 A. Well, I consider it the same as the licensing.  
23 So basically somewhere -- I mean, in the ballpark  
24 figures -- I mean, it varies so much from case to case,  
25 from use to use. It's so hard to put, like, a monthly

1 estimate.

2 Q. Can you estimate what a good month would be for  
3 receiving income from enforcement?

4 A. 5-, 6-, \$7,000.

5 Q. So is that the same number you referred to  
6 earlier regarding good months for licensing?

7 A. Yeah. Because I -- well, it's the same -- it's  
8 a similar thing as to licensing, because some of it is  
9 more akin to licensing, some of it is more akin to -- I  
10 mean, a lot of it is confidential, so all the details  
11 and nuts and bolts. There are many varied different  
12 ways that it works, so those numbers are kind of like  
13 part of the same pie. So, yeah, that's -- that's  
14 around -- I mean, it's very differentiated depending so  
15 much on who's using it, how they -- you know, how they  
16 used it and all that. But yeah, a hundred percent I  
17 rely on the expertise of my attorneys.

18 Q. And when you referred to 5-, 6-, 7,000 for  
19 licensing and enforcement, is that the same number for  
20 each where it would be 5-, 6-, 7,000 for licensing and  
21 enforcement, or are you considering those -- those two  
22 concepts separately?

23 A. I'm combining those two concepts. I can't  
24 really differentiate them because the way that all the  
25 deals are worked out, it's all this varies, like,

1 whether some combination of licensing enforcement or  
2 licensing and enforcement. So I don't fully understand  
3 all the details all the time, but I rely on my  
4 attorneys.

5 Q. So in a good month when you say you probably  
6 receive 5-, 6-, \$7,000, that's from both licensing and  
7 enforcement together?

8 A. Yes.

9 Q. Now, aside from your attorneys, who are  
10 representing you here today, do you work with any other  
11 attorneys?

12 A. Yes.

13 Q. Could you provide the names of those attorneys?

14 A. Yes. I've worked with Higbee & Associates and  
15 Steve Vondran.

16 Q. And do your attorneys represent you on a  
17 contingency basis?

18 A. Yes.

19 Q. Do you receive any income from litigation  
20 settlements?

21 MS. ZAHARIA: Objection.

22 BY MS. GATES:

23 Q. You can answer.

24 A. Yes.

25 Q. About how much income a month, on a good month,

1 do you receive from litigation, a settlement?

2 A. Oh, I put that all as part of the copyright  
3 enforcement and licensing.

4 Q. So about 5-, 6-, or \$7,000 on a good month,  
5 that is attributed to licensing enforcement and  
6 litigation income?

7 A. Yes.

8 MS. ZAHARIA: Counsel, I'm going to ask to take  
9 a quick break.

10 Before we go off the record, we want to  
11 designate this transcript as "confidential."

12 MS. GATES: We can do the temporary designation  
13 and then, you know, go through it portion by portion  
14 within the 30 days as allotted by the protective order.

15 MS. ZAHARIA: That's fine.

16 MS. GATES: How many -- how much time do you  
17 need?

18 MS. ZAHARIA: About five minutes.

19 MS. GATES: Okay.

20 (Recess)

21 MS. GATES: Okay. We are back on the record  
22 now.

23 BY MS. GATES:

24 Q. I'll remind you that you're still under oath.  
25 Did anyone else come back into the room with



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1 UNITED STATES DISTRICT COURT )  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA )

3  
4 I, SHEREE L. SPENCER, CSR No. 11073, Certified  
5 Shorthand Reporter, certify:

6 That the foregoing proceedings were taken  
7 before me at the time and place therein set forth, at  
8 which time the witness was put under oath by me;

9 That the testimony of the witness, the  
10 questions propounded, and all objections and statements  
11 made at the time of the examination were recorded  
12 stenographically by me and were thereafter transcribed;

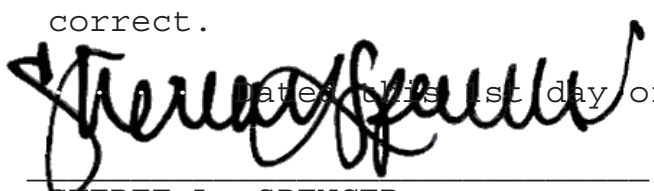
13 That a review of the transcript by the deponent  
14 was requested;

15 That the foregoing is a true and correct  
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative or  
18 employee of any attorney of the parties, nor financially  
19 interested in the action.

20 I declare under penalty of perjury under the  
21 laws of California that the foregoing is true and  
22 correct.

23 I dated this 1st day of April, 2021.

24   
25 SHEREE L. SPENCER  
CSR No. 11073